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In the

Supreme Court of the United States

October Term, 1960.

No. 658

UNION LEADER CORPORATION,
PETITIONER,

v.

NEWSPAPERS OF NEW ENGLAND, INC., ET AL.,
RESPONDENTS

PETITION FOR REHEARING OF DENIAL OF PETITION FOR WRIT OF CERTIORARI

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Bradford Printing Company, Boston, Mass. — Law Printers

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

This Court denied the petition of Union Leader Corporation for a Writ of Certiorari to the Court of Appeals for the First Circuit on March 6, 1961.

The petition raised two questions. First, petitioner contended that the Court of Appeals erred in reversing the decree of the District Court which enjoined respondent Haverhill Gazette from continuing discriminatory pricing tactics and from attempting to monopolize the Haverhill, Massachusetts newspaper business. Petitioner's second contention was that the courts below erred in not finding that the

actions of the 22 respondent newspaper publishers who combined to purchase the Haverhill Gazette constituted violations of Section 2 of the Sherman Act and Section 7 of the Clayton Act.

In support of its first contention petitioner relied upon the fact that the judgment of the Court of Appeals was in direct conflict with this Court's decision in *Keifer-Stewart v. Seagram & Sons*, 340 U.S. 211, 214 and with other decisions of this Court cited at p. 15 of the original petition. It will be remembered that the Court of Appeals absolved the Haverhill Gazette from pricing tactics found to be in violation of the antitrust laws by the District Court. The Court of Appeals did so on the theory that such tactics were not in violation of the antitrust laws, simply because they were employed to resist a deterioration of the Gazette's competitive position.

The effect of the Court of Appeal's judgment, if not overturned by this Court, is that the first concern to enter a field may flout the antitrust laws to maintain itself, but that a new entrant is forbidden to violate the antitrust laws to gain a foothold.

Petitioner did not conceive that the case would be left in this posture. If it had, it would have presented the question of its own liability in its petition for the writ.

It is evident from the findings of the courts below that the acts and conduct of petitioner were no more reprehensible in the light of the antitrust laws than those of respondents. Both rival newspapers engaged in discriminatory pricing according to the courts below. Petitioner was also found to have combined with some eight local merchants and, temporarily, with a labor union. Respondents combined to acquire the Gazette under circumstances which plainly show that they intended to eliminate the competition of petitioner in Haverhill and to prevent petitioner from competing against them elsewhere.

If, as the Court of Appeals held, respondents did not violate the antitrust laws, then petitioner is equally blameless. This Court should hear the case and place both parties on an equal footing, either under a judgment of liability or under a judgment dismissing both petitioner's complaint and the respondent Gazette's counterclaim. It is submitted that this Court's recent ruling in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.* (No. 50, October Term, 1960; decided February 20, 1961) advocates equal treatment of competitors engaged in like practices which do not offend the antitrust laws. Here, as in *Eastern Railroad*, this Court should restore a "no-holds barred fight".

Absent such a restored balance, petitioner is likely to be forced to the wall by an opponent who is permitted by the courts to use the antitrust laws as a weapon, while petitioner is denied their use as a shield. Such an outcome would be unfortunate in any industry. Where the press is concerned in an age where freedom to express all manner and shades of opinion, popular or unpopular, is so important, to eliminate one small newspaper by a misguided construction of law would be tragic.

Petitioner, therefore, requests that the writ issue in order that this Court may determine whether the parties have violated the antitrust laws under the facts found below.

Respectfully submitted,

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Of counsel

CERTIFICATE

I, JAMES M. MALLOY, one of counsel for petitioner, hereb
certify that the foregoing petition for rehearing is pr
sented in good faith and not for delay; and that the petitio
is restricted to a substantial ground available to petitione
but not previously presented and to an intervening circum
stance of substantial effect.

(s) JAMES M. MALLOY
Attorney for Petitioner